

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Perri Fagin	Team: Squad #11	CCRB Case #: 201606477	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/27/2016 12:50 AM	Location of Incident: 8806 Parsons Boulevard	Precinct: 103	18 Mo. SOL 1/27/2018	EO SOL 1/27/2018	
Date/Time CV Reported Wed, 07/27/2016 3:51 AM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Wed, 07/27/2016 3:51 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Donald Kipp	01024	904278	103 PCT
2. POM Domenick Lagomarsine	13783	943457	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Donald Kipp	Abuse: Sergeant Donald Kipp stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Domenick Lagomarsine	Abuse: Police Officer Domenick Lagomarsine stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM Domenick Lagomarsine	Abuse: Police Officer Domenick Lagomarsine frisked § 87(2)(b)	
D.POM Domenick Lagomarsine	Abuse: Police Officer Domenick Lagomarsine searched § 87(2)(b)	
E.POM Domenick Lagomarsine	Abuse: Police Officer Domenick Lagomarsine searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(4-b), § 87(2)(g)		

### Case Summary

On July 27, 2016, § 87(2)(b) filed this complaint at the 103<sup>rd</sup> Precinct stationhouse. It was received at the CCRB on the same date.

On July 27, 2016, at approximately 12:50 a.m., § 87(2)(b) was driving alone in a rented Nissan sedan when his vehicle was stopped in front of 88-06 Parsons Boulevard in Queens by Sgt. Donald Kipp and PO Domenick Lagomarsine, both from the 103<sup>rd</sup> Precinct (**Allegations A and B**). Sgt. Kipp and PO Lagomarsine exited their vehicle and approached § 87(2)(b). After § 87(2)(b) produced his driver's license and paperwork, PO Lagomarsine noticed that the rental agreement was expired. PO Lagomarsine ordered § 87(2)(b) out of his vehicle and he complied. PO Lagomarsine frisked (**Allegation C**) and allegedly searched § 87(2)(b) (**Allegation D**). PO Lagomarsine ordered § 87(2)(b) to stand at the rear of his car with Sgt. Kipp while PO Lagomarsine searched § 87(2)(b)'s vehicle (**Allegation E**). After PO Lagomarsine conducted database searches, which confirmed that § 87(2)(b)'s vehicle had not been reported stolen and that his license was valid, the officers left the scene. § 87(2)(b) was not arrested or summonsed as a result of this incident. § 87(4-b), § 87(2)(g)

There is no video footage of this incident.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of October 11, 2016, § 87(2)(b) has not filed a Notice of Claim with the New York City Comptroller's Office regarding this incident (Board Review 02).

### Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (Board Review 03).
- Sgt. Kipp has been a member-of-the-service for 23 years, and has 11 prior CCRB complaints filed against him involving 19 allegations, two of which were substantiated. In CCRB Case # 20150590, the Board substantiated allegations that Sgt. Kipp stopped and frisked an individual. The Board recommended formalized training for both allegations. The NYPD issued Sgt. Kipp formalized training regarding the frisk, but the NYPD disposition regarding the stop allegation remains unknown.
- PO Lagomarsine has been a member-of-the-service for nine years, and has 11 prior CCRB complaints filed against him involving 19 allegations, one of which was substantiated. In the same case where Sgt. Kipp was issued formalized training, the Board recommended that the same be issued to PO Lagomarsine for stopping an individual. The NYPD agreed with this recommendation.

## **Findings and Recommendations**

**Allegation A -Abuse of Authority: Sergeant Donald Kipp stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation B -Abuse of Authority: Police Officer Domenick Lagomarsine stopped the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that Sgt. Kipp and PO Lagomarsine stopped the vehicle in which § 87(2)(b) was an occupant because § 87(2)(b)'s headlights were off.

Every motor vehicle except a motorcycle, driven upon a public highway during the period from one-half hour after sunset to one-half hour before sunrise shall display at least two lighted head lamps on the front. New York State Vehicle and Traffic Law, Section 375.2(a)1 (Board Review 04).

§ 87(2)(g)

**Allegation C -Abuse of Authority: Police Officer Domenick Lagomarsine frisked § 87(2)(b)**

**Allegation E -Abuse of Authority: Police Officer Domenick Lagomarsine searched the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) alleged that after PO Lagomarsine ordered him out of his vehicle, he frisked him, searched him, and ordered him to the rear of his car, where Sgt. Kipp was standing. Through his car's rear window, § 87(2)(b) stated that he saw PO Lagomarsine enter the vehicle, look under the seats, inside the glove compartment, and inside the center console. When specifically asked about marijuana during his CCRB interview, § 87(2)(b) explicitly testified, "I don't smoke." § 87(2)(b) testified that he did not have marijuana or any other drugs in the car and that no one had smoked marijuana in the car.

Sgt. Kipp alleged that he smelled a faint smell of marijuana emanating from § 87(2)(b)'s vehicle as he approached the passenger side and § 87(2)(b) was rolling down the two front windows. PO Lagomarsine alleged that the odor of marijuana could only be smelled once the door of § 87(2)(b)'s vehicle was opened. Sgt. Kipp said that he smelled the odor of marijuana on § 87(2)(b)'s person, while PO Lagomarsine said that he did not.

Initially, Sgt. Kipp testified that he did not remember if PO Lagomarsine spoke with § 87(2)(b) about the odor of marijuana. Later in his CCRB interview, when specifically asked if any further investigation was conducted regarding the odor of marijuana, Sgt. Kipp changed his testimony and stated that while at the rear of the car, PO Lagomarsine asked § 87(2)(b) about marijuana and § 87(2)(b) stated that he had smoked earlier. However, PO Lagomarsine did not remember if he ever spoke with § 87(2)(b) about marijuana.

PO Lagomarsine acknowledged frisking § 87(2)(b). PO Lagomarsine testified that he verbally informed § 87(2)(b) that he would be frisked and that Sgt. Kipp was walking to the rear of § 87(2)(b)'s vehicle when the frisk occurred. PO Lagomarsine stated that the frisk was to "make sure everybody [was] safe," although he said there was never any indication that § 87(2)(b) was armed. PO Lagomarsine testified that he placed his upper body through the driver's door and generally looked around inside the vehicle to see if anything was lit, which

could have posed a fire hazard. He saw nothing lit inside. PO Lagomarsine denied touching anything inside the vehicle.

Sgt. Kipp denied seeing PO Lagomarsine frisk § 87(2)(b) and denied seeing PO Lagomarsine enter or search § 87(2)(b)'s vehicle.

PO Lagomarsine recorded a detailed memo book entry about this incident, documenting the reason for the stop, the expired rental agreement, and the checks he ran to ensure that the vehicle was not stolen (Board Review 08). PO Lagomarsine's memo book also documents that § 87(2)(b)'s rental agreement expired on May 20, 2016. His memo book fails to mention the odor of marijuana that he and Sgt. Kipp spoke of in their CCRB interview, as does Sgt. Kipp's memo book entry (Board Review 09).

§ 87(4-b) § 87(2)(g)

When an officer smells marijuana emanating from a vehicle, they have probable cause to search the vehicle and its occupants for drugs. People v. Contant, 77 A.D. 3d 967 (2010) (Board Review 11). A frisk is justified if the officer reasonably suspects that he is in danger of physical injury by virtue of the detainee being armed. People v. De Bour, 49 A.D. 2d 1038 (Board Review 12).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation D -Abuse of Authority: Police Officer Domenick Lagomarsine searched § 87(2)(b)**

§ 87(2)(b) alleged that pursuant to being frisked, PO Lagomarsine reached into § 87(2)(b)'s front left and right pants pockets and removed money, a wallet, keys, and lip balm. PO Lagomarsine denied reaching into any of § 87(2)(b)'s pockets and Sgt. Kipp denied seeing PO Lagomarsine do so. The alleged search was not documented in either officers' memo books and no Stop, Question and Frisk Report was prepared in regard.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

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Squad: 11

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

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